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KIRKPATRICK & LOCKHART NICHOLSON GRAHAM LLP (FORMERLY KIRKPATRICK & LOCKHART LLP) **75 STATE STREET**

BOSTON, MA 02109-1808

EXAMINER

WILLIAMS, CATHERINE SERKE

ART UNIT 3763

DATE MAILED: 01/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

			£.
		Application No.	Applicant(s)
		09/888,757	AHERN ET AL.
Office Action Summary		Examiner	Art Unit
		Catherine S. Williams	3763
Period f	The MAILING DATE of this communication app or Reply	pears on the cover sheet with the c	orrespondence address
WHI - Exte afte - If No - Fail Any	HORTENED STATUTORY PERIOD FOR REPL' CHEVER IS LONGER, FROM THE MAILING D. ansions of time may be available under the provisions of 37 CFR 1.1 r SIX (6) MONTHS from the mailing date of this communication. O period for reply is specified above, the maximum statutory period was ure to reply within the set or extended period for reply will, by statute reply received by the Office later than three months after the mailing and patent term adjustment. See 37 CFR 1.704(b).	ATE OF THIS COMMUNICATION 36(a). In no event, however, may a reply be tir will apply and will expire SIX (6) MONTHS from to, cause the application to become ABANDONE	N. nely filed the mailing date of this communication. ED (35 U.S.C. § 133).
Status			
1)[🛛	Responsive to communication(s) filed on 30 D	ecember 2005.	
•	•	action is non-final.	
	Since this application is in condition for allowa	nce except for formal matters, pro	osecution as to the merits is
	closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.		
Disposi	tion of Claims		
4)🛛	Claim(s) 19-38 is/are pending in the application	n.	
	4a) Of the above claim(s) 19 is/are withdrawn f	from consideration.	
5) 🗌	Claim(s) is/are allowed.		
-	Claim(s) <u>20-38</u> is/are rejected.		
	Claim(s) is/are objected to.		
8)[_]	Claim(s) are subject to restriction and/o	or election requirement.	
Applicat	tion Papers		
	The specification is objected to by the Examine		
10)	The drawing(s) filed on is/are: a)☐ acc	•	
	Applicant may not request that any objection to the		
441	Replacement drawing sheet(s) including the correct	•	
11)	The oath or declaration is objected to by the Ex	xaminer. Note the attached Office	Action of form PTO-152.
Priority	under 35 U.S.C. § 119		
12)	Acknowledgment is made of a claim for foreign	priority under 35 U.S.C. § 119(a)-(d) or (f).
a)) All b) Some * c) None of:		
	1. Certified copies of the priority document	s have been received.	
	2. Certified copies of the priority document	s have been received in Applicat	ion No
	3. Copies of the certified copies of the prio		ed in this National Stage
	application from the International Burea	, , , , , , , , , , , , , , , , , , , ,	
*	See the attached detailed Office action for a list	of the certified copies not receive	ed.
Attachme	nt(s)		

1) Notice of References Cited (PTO-892)

Paper No(s)/Mail Date 2/19/02.

2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)

5) Notice of Informal Patent Application (PTO-152)

4) Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.

6) Other: _____.

DETAILED ACTION

Claim Objections

The objection to claims 31-32 has been withdrawn in light of the amendment to the claims dated 12/30/05

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 20-27 and 29-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wappler (USPN 2,269,963) in view of Campbell et al (USPN Re.34,936). Regarding claims 20 and 33, Wappler discloses an apparatus for carrying a plurality of sequentially positioned pellets (20) comprising a therapeutic agent (radioactive) and sequentially implanting one or more of the pellets within a tissue wall. See 1:6-7. The device includes an elongate body (32), a delivery chamber (22) having a space for the pellets (see figure 9) and a port (23), an actuator (39), and a distal end that is sharp and can penetrate a tissue wall. See element 23 and figure 2.

Regarding claims 21 and 34, see trigger 38.

Regarding claims 22 and 35, see handle 37 which can be held and moved to turn the distal end to guide the device through a body lumen if one so chooses.

Regarding claim 23, the distal end of the device and the elongate body appear to be of a size and dimension that are capable of being inserted into a vessel of the body or into the interior of the heart if one so chooses.

Regarding claim 24, see tubular chamber 22 and 3:4.

Regarding claim 25, the distal end of the device is beveled and designed to penetrate tissue. See 3:10-12.

Regarding claims 26 and 36, see plunger 40.

Regarding claims 27 and 37, see ratchet assembly 41.

Regarding claim 29, see figure 9.

Regarding claims 30 and 38, see figure 2 and handle 37.

Regarding claim 31, see tubular (arcuate) chamber 22.

Regarding claim 32, see figure 9 element 24 and 3:12-22.

Wappler meets the claim limitations as described above but fails to include the elongate body being a flexible body. However, Campbell teaches a device for sequential delivery of pellets into a body having a sharp distal tip for delivering the pellets. As shown in figure 9, the device has an elongate flexible body (25) that is made from plastic resin (see 4:10-17).

At the time of the invention, it would have been obvious by one skilled in the art to make the elongate body (32) of Wappler from a plastic resin that is injection molded about tube 31 as taught by Campbell. In light of the fact that Wappler is silent as to the materials used to manufacture the device, one skilled in the art would recognize that plastic is a preferred material

in the art due to its weight and ease of manufacture. The motivation for the incorporation would have been in order to use a known material to achieve the prior art device.

Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wappler in view of Dragan (USPN 4,457,712). Wappler meets the claim limitations with respect to claim 20 above but fails to include the threaded plunger of claim 28.

However, Dragan discloses an injection device that include both the teach of a plunger with ratchets and threads. See figures 6 and 17.

At the time of the invention, it would have been obvious by one skilled in the art to substitute the ratchets of Wappler for the threads as taught by Dragan. One skilled in the art would recognize that both threads and ratchets are designed to move the plunger from one end to another in order to dispense a material. However, one skilled in the art would recognize that threads provide the ability to move the plunger in smaller increments; thereby, enhancing the control of the movement of the plunger. The motivation for the substitution would have been in order to enhance the control of the movement of the plunger for dispensing the material.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Catherine S. Williams whose telephone number is 571-272-4970.

The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas D. Lucchesi can be reached on 571-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Catherine S. Williams

Cathing S. William

January 18, 2006